RECENT CASES

CONTRACTS—INTERPRETATION—WRITING AND PRINTING.—B. F. STURTEVANT CO. v. FIREPROOF FILM CO., N. Y. L. J., DECEMBER 1, 1915 (CT. OF APPEALS).—The plaintiff sent a contract to defendants, typewritten upon their office stationery, at the bottom of which were printed in small type certain conditions and exceptions to which no reference was made in the body of the contract. *Held,* such conditions and exceptions do not become part of the contract.

Where part of a contract is written and part is printed, and the written and printed parts are apparently inconsistent or there is reasonable doubt as to the sense and meaning of the whole, the words in writing will control the construction of the contract. 6 Ruling Case Law, p. 847; *City of Chicago v. Weir,* 165 Ill. 582; *Mansfield Mach. Works v. Lowell Common Council,* 62 Mich. 546. The reason for the rule is, that the part which is specially put into a particular instrument is naturally more in harmony with what the parties intend, than the other. *Daly v. Busk Tunnel Ry. Co.,* 129 Fed. 513; *Joyce v. Realm Marine Ins. Co.,* L. R. 7 Q. B. 580. The courts are agreed that if reference be made in the contract to written or printed terms contained in another instrument, such instrument becomes part of the contract; a fortiori, then, reference to printed matter, contained on the same paper as the contract, will make the matter referred to a part of the contract. *Barton v. Traveler's Ins. Co.,* 84 S. C. 209. If the written and printed portions be not inconsistent and irreconcilable, they must be made to harmonize. *Soucy v. Obert Brewing Co.,* 180 Ill. App. 69; *Wheeling R. R. Co. v. Gourley,* 99 Pa. St. 171. In the instant case, the court seems reasonably to have been influenced by the fact that the typewritten words appeared above the printed form, and the page numbering intervened. But since there is a positive duty on the court to construe the contract on a consideration of the whole instrument and not on detached portions, and since, further, it was possible to harmonize the two, the court should have made an attempt to do so. The printed form adopted for general use should be disregarded only so far as it appears that it was the intention of the parties to change or reject such printed stipulation. See *Frost's Detroit Lumber, Wooden-Ware Works, etc. v. Miller's, etc., Ins. Co.,* 37 Minn. 300.

A. N. H.

DAMAGES—PERSONAL INJURIES—MENTAL ANGUISH—PROXIMATE OR REMOTE.—ST. MARTIN v. N. Y., N. H. & H. R. R. CO., 94 ATL. (CONN.) 279.—*Held,* that mental anguish due to plaintiff's inability to be with his dying wife and subsequent remorse at her grave because he was unable to see her before her death are too remote elements of damage to be considered in an action for personal injuries.

The general rule has come to us from England that mental anguish and suffering resulting from negligence unaccompanied by injury to the person cannot be the basis of an action for damages. *Lynch v. Knight,* 9 H. L.